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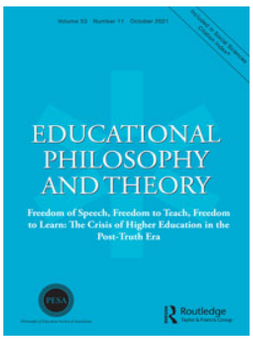

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A discourse theoretical model for determining the limits of free speech on campus

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ABSTRACT

Recent controversies concerning freedom of expression on university campuses have raised the question of how the limits of free speech can be determined in a justified way in a pluralistic public space such as the campus. The article addresses this question from the viewpoint of two complementary theoretical perspectives: Rainer Forst's respect conception of toleration, and the discourse theory of democracy developed by Jürgen Habermas and Seyla Benhabib. These theories are argued to provide a non-arbitrary, impartial and procedural model for determining the limits of free speech on campus. Deriving primarily from the discourse model, the article suggests that the limits of freedom of expression on campus should be determined by collective deliberative processes involving the affected students. Moreover, it is argued that, instead of prohibiting controversial topics or views, the university administration and teachers should focus on establishing procedural rules of rational deliberation. This is argued to increase students' understanding of the nature of legitimate democratic discussion and thus accomplish the university's educational task of fostering students' ability to use their freedom of speech in a responsible way.

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Introduction

Although free speech controversies on campus are not a new issue, the debate has resurged as a consequence of recent protests and events related to the matter. Especially in the United States, controversial speakers have been met with aggressive protests. Safe spaces, free speech zones and trigger warnings have become commonplace practices not just in the US but on campuses all over the world (e.g. Ben-Porath, 2017; Callan, 2016; Wells, 2018). Free speech restrictions are typically defended by arguing that sensitive issues such as race, sexuality and war are beyond reasonable discussion or that debates on these issues might lead to offensive speech that violates the dignity of the members of vulnerable groups (Ben-Porath, 2017). The suggested limitations have been contradicted by arguments from free speech enthusiasts and absolutists who suggest that speech on campus should be virtually unregulated once it has passed the legal threshold (Ben-Porath, 2017; Chamlee-Wright, 2018). Also, many academics have expressed their concern that restrictions on freedom of expression jeopardise the core functions of the university, including academic freedom and the free and independent pursuit of knowledge (e.g. Downs, 2009).

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These concerns are evidently justified: in addition to its relevance to academic freedom and the pursuit of knowledge, freedom of speech is one of the most important of civil rights and central constituents of democratic life. While freedom of speech is decisive for individual autonomy and self-expression, it is equally vital for democratic politics as it allows subjecting citizens' views and opinions to critical scrutiny, enables the formation of public opinion and provides the democratically important check on the existing government (e.g. Gutmann, 1997). Because of its crucial significance for a healthy democratic culture, proposed restrictions on freedom of speech are justifiably met with reservation. However, as Peter Scott (2017) points out, no society has ever granted its citizens unrestricted freedom of speech and no campus can agree that 'anything goes'. Especially in the current political climate, characterised by hate speech, disrespect, fake news, and downright lying, regulations on freedom of speech seem more essential than before. The question is thus not whether to regulate free speech on campus but, rather, *how* academic speech should be regulated and by *what criteria*, and *under whose authority*.

Moreover, a perspective that is often neglected in discussions concerning free speech on campus is that universities are *educational* institutions and therefore not only responsible for protecting the legal rights and dignity of students, but also *educating* them about responsible use of freedom of speech in the public sphere. As Amy Gutmann (1997) points out, if educators convey to students that free speech, understood as a license to say anything, will bring about justice, they will have conveyed a dangerous untruth. She further points out that the way in which citizens use their freedom of speech is certainly influenced by the way in which they have been taught, and therefore education cannot be neutral on this issue. As an educational institution, the university should take responsibility for educating students about the discursive norms that ought to apply to legitimate democratic discussion and thus take part in creating conditions for a well-functioning democracy.

In this article, my aim is to respond to the following two questions: first, how the limits of free speech can be drawn in a non-arbitrary and impartial way on university campus and, second, how responsible use of freedom of expression can be promoted in higher education. It should be noted that my suggestions are primarily applicable to the context of liberal democratic societies in which freedom of speech and pluralism concerning values and worldviews are broadly endorsed values in higher education and where the relationships between students and teachers are relatively non-hierarchical. I approach the first question through the notion of toleration, because controversies over freedom of speech are ultimately disputes over what kind of speech can and cannot be tolerated in a pluralistic public space such as the campus.[1] Hence, to respond to the first question, I draw from Rainer Forst's (2004, 2013) *respect conception of toleration*, which is rooted in the principles of reciprocity and generality. The core idea of the respect conception is that while the tolerating parties find the views held by others as ethically rejectable, they nevertheless recognise others' right to hold these views and thus practice toleration reciprocally (Forst, 2004). Accordingly, I suggest that the respect conception provides normative criteria based on which conflicts over freedom of expression on campus can be resolved in a relatively impartial way, reflecting the interests of all students equally rather than prioritising the views and values of one group over others.

To answer the second question, and also to elaborate on my response to the first, I employ Jürgen Habermas' (1996) and Seyla Benhabib's (1992, 1996) discourse theories of democracy. Habermas' and Benhabib's works align with Forst's respect conception in the sense that the model of rational discourse developed in these works embodies the central normative principles of the respect conception, reciprocity and generality (see Forst, 2013; Habermas, 2004). Moreover, Habermas' and Benhabib's theories complement and extend the respect conception in a fruitful way: in these theories, the limits of toleration are associated with procedural rules of deliberation. Accordingly, the discourse theory of democracy provides a procedure through which the limits of toleration can be determined by those affected by these limits without excluding particular topics, views or identities in beforehand. My argument is that this discourse

theoretical interpretation of toleration has important implications for drawing the limits of free speech on campus and for educating students concerning responsible use of free speech. First, the discourse theory of democracy provides a model for drawing the limits of free speech through student deliberation, without setting prima facie restrictions to topics of discussion or to the identities and views of participants. Consequently, the model allows relinquishing 'gag rules' and trigger warnings, which are often found problematic from the viewpoint of academic freedom, and which prevent learning from discussions on controversial topics (Ben-Porath, 2017; Davids, 2018). Second, the focus of the discourse model on rules of deliberation serves the educational and democratic functions of the university because by learning about the rules of legitimate democratic deliberation, students also learn what it means to use one's freedom of speech in a responsible way.

The article is structured as follows: in the next section, I introduce Forst's respect conception of toleration and suggest that it can provide relatively impartial criteria of toleration for the campus understood as a public space. After that, I move on to discussing Jürgen Habermas' and Seyla Benhabib's discourse theories of democracy with the purpose of demonstrating how these theories complement and extend Forst's respect conception. Then I move on to demonstrating how the discourse model could be employed on campus and indicate the educational and normative potential involved in the implementation of the model in the context of higher education. The final section focuses on concluding remarks.

Defining the concept of toleration for the campus as a public space

The mass higher education systems in most liberal democratic societies have become 'rainbow' systems that reflect the diversity of the societies in which they are embedded (Scott, 2017). In the context of today's liberal democracies, the campus can be understood as a public space or a pluralistic context involving a variety of different ethical views of the good and political views on how society should be organised (e.g. Fleming, 2010; Giroux, 2002). Moreover, in democratic societies, universities typically involve a strong preference for diversity, pluralism and inclusion, and universities also attempt to provide equal opportunities for the expression of a variety of different voices and perspectives, including those of the marginalised and vulnerable groups (Ben-Porath, 2017). Public universities should also prepare students for their roles as citizens of the democratic society and thus provide them with competences and capabilities associated with democratic citizenship, the ideas of public justification and reasoning being among the most central (e.g. Gutmann, 1999).

Based on this understanding of the campus as a diverse and public space, free speech controversies on campus should be resolved in a way that reflects this diversity. The important question thus is, how conflicts over freedom of expression can be resolved in an impartial way, reflecting the interests of all students equally rather than prioritising the views and values of one group over others. Rainer Forst's (2004, 2013) theory of toleration represents an attempt to develop an impartial notion of toleration for the public sphere in democratic societies. At the core of his theory is the *respect conception* of toleration, which is based on the principles of reciprocity and generality. In this context, *reciprocity* means that no one is justified to make claims concerning certain rights or resources that one denies to others, and that one should not project one's own values or interests onto others. *Generality* refers to the idea that reasons for basic norms need to be reciprocally acceptable among all citizens, not just the dominant parties (Forst, 2004, p. 317). What follows from the respect conception of toleration is the demand to "tolerate those beliefs and practices with which one disagrees but which themselves do not violate the criteria or the 'threshold' of reciprocity and generality" (Forst, 2004, p. 317). According to the respect conception, the tolerating parties thus recognise that while they may hold different, even incompatible ethical views, they respect each other as moral-political equals in the sense

that they see that their common framework of social life should be guided by norms that all parties can equally accept.

As Forst (2004) further points out, the limits of toleration are reached when one party tries to dominate others by making its rejectable views the general norm. This represents a form of intolerance that cannot be tolerated. There are thus two limits associated with the notion of toleration: the first limit is reached with views that are not agreed with but nevertheless tolerated because of the respect for the equal rights of those presenting these views. The other, absolute and final limit of toleration is reached with views that simply cannot be tolerated because they violate the criteria of reciprocity and generality inherent in the respect conception (Forst, 2001, 2004). Importantly, Forst (2004, 2013) argues that the intolerance toward the views that cross the second threshold is not simply another form of ethical intolerance because it does not absolutise one controversial ethical view. Namely, the respect conception ultimately derives its justification from the idea of justification itself; it rests on normative reasons that *cannot be reciprocally and generally rejected* (Forst, 2013, p. 453, italics in original). In other words, the respect conception cannot be rejected without rejecting the idea of reciprocal and general justification itself. Consequently, someone who rejects the respect conception cannot consistently demand toleration or equal treatment from others because that would require appealing to the principles that one rejects.

I suggest that the respect conception of toleration described above can provide a plausible foundation for resolving controversies over freedom of speech in a pluralistic setting such as the university campus. As Forst (2004) points out, the respect conception departs from what he calls a "permission conception" (p. 315), in which either some authority or the majority gives qualified permission to the members of the minority to live according to their beliefs on the condition that the minority accepts the dominant position of the authority and does not demand to be recognised as equal. This form of toleration would not be justified in a pluralist and public setting such as the campus because it illegitimately prioritises one comprehensive view or a set of values over those of others and thus fails to reflect the diversity of the views represented by students. In what follows, I elaborate on Forst's respect conception of toleration through the works of Habermas and Benhabib.

Discourse theory of democracy and the rules of deliberation as limits of toleration

Jürgen Habermas' discourse theory of democracy is a continuation of his broad philosophical project and rooted in the central ideas of his previous theories, the theory of communicative action and discourse ethics. At the core of Habermas' (1994, 1996) democratic theory and discourse ethics is a similar idea as the one expressed by Forst's respect conception: in pluralistic societies where there is no common religion or ethos to found normative decisions on, controversies over shared norms should be resolved from an impartial viewpoint and in the equal interest of all affected persons. Because no party alone can accomplish such a viewpoint of impartiality, controversies over shared norms of action must be resolved through a collective process of deliberation, which includes all affected parties and their different perspectives and ethical and political views (Habermas, 1994, 1996).

Importantly, for the process to yield impartial and genuinely legitimate outcomes, several normative preconditions must apply to deliberation: the process must be inclusive of all affected parties, all participants must be treated equally, participants must be sincere and truthful in their arguments, and the process of deliberation must be free from internal and external coercion and constraints other than the force of the better argument (Habermas, 1994). Habermas (1994, 1996) refers by the term of *rational discourse* to an ideal speech situation in which these preconditions are fulfilled. These preconditions are expressed in a condensed form by the discourse principle (D), which states that "only those norms of action are valid to which all possibly

affected persons could assent as participants in rational discourses" (Habermas, 1996, p. 459). Habermas' democratic theory, in turn, is an attempt to demonstrate how (D) can be institutionalised in the medium of politics and law through a system or rights, which defines how citizens must perceive their mutual political relations as participants in the processes of legitimate law-making.[2]

Seyla Benhabib (1992) elaborates on Habermas' discourse ethics by outlining two central principles, which should apply to democratic deliberation for it to yield legitimate outcomes: (1) *universal moral respect,* which requires that all beings capable of speech and action must be included as participants in the moral conversation; and (2) *egalitarian reciprocity,* which demands that all participants must have the same symmetrical rights to various speech acts, initiate new topics, and ask for reflection about the presuppositions of conversation (Benhabib, 1992, p. 29, italics in original). According to Benhabib (1992, 1996), these two principles constitute the rational preconditions of deliberation and thus function as 'rules' of deliberation that guide the actions of participants. The essential content of these rules is similar to Habermas's preconditions of rational discourse, as they require that everyone affected by the disputed norms must be included in deliberation and that everyone must be granted equal rights in their role as participants in deliberation.

These rules of deliberation, outlined by Habermas and Benhabib, share the normative core content of Forst's respect conception as they demand that the interests of all affected parties must be taken into consideration (generality) and that the participants of deliberation must be treated equally (reciprocity).[3] Importantly, these rules set the limits of toleration in the discourse model (Thomassen, 2006). As Habermas (1998) points out, doctrines that "claim exclusiveness for a privileged way of life" (p. 224) and lack understanding of the fallibility of their claims, are incompatible with constitutional democracy and the associated idea of equal rights and thus fall beyond the purview of toleration. However, the reason not to tolerate such doctrines is not associated with the topics of discussion introduced or the identities of those presenting the intolerable views. Rather, the reason for intolerance is the nature of the *arguments* that violate the procedural rules of legitimate democratic discussion. As Benhabib (1996) points out, in discourse theory of democracy, there are no prima facie rules delimiting the agenda of conversation or the identities of participants. Accordingly, no particular issues or topics should be considered as being "off the agenda" (Benhabib, 1996, p. 79) of public discussion or ruled out in beforehand, not even controversial topics such as sexuality, race, war, and other themes that are often subject to trigger warnings on campus. The core idea of rational deliberation is that while the process should be maximally inclusive, the normative preconditions of deliberation should ensure that illegitimate claims do not 'pass' the test of argumentation.

Importantly, both Habermas (1994, 1996) and Benhabib (1992, 1996) see the rules of argumentation as arising from the reciprocal expectations of the participants in deliberation and thus receiving their normative force from mechanisms endogenous to argumentation instead of some external authority. Therefore, they both suggest that even the rules of deliberation should be in principle open to discussion.[4] However, as Benhabib (1996) emphasises, the reciprocal nature of deliberation ensures that these rules cannot be overruled or abrogated without first fully engaging with them and taking these rules "absolutely seriously" (p. 80). She argues that nobody can convince others in public discussion without being able to explain why what appears to oneself as good, plausible or convincing should be understood in the same way by others (Benhabib, 1996). Therefore, by taking part in deliberation, one is required to consider the viewpoint of all those affected and thus to accept, at least to some degree, the rules of the process, even if it is only to contest them. This ideally prevents inegalitarian or intolerant views from being tolerated, unless the arguments supporting these views can convince others of their plausibility, including those toward whom the intolerance is directed.

The discourse theory of democracy described above has often been contested for being unrealistic concerning the nature of political action and, consequently, incapable of addressing

actual inequalities (e.g. Ellsworth, 1997; Sanders, 1997; Young, 1996). However, in my view, these critiques fail to acknowledge the *intentionally* ideal or aspirational nature of the theory: the discourse theory of democracy aims to offer a normative model of *democratic legitimacy* rather than a description of actual processes of deliberation. As Benhabib (1996) points out, the procedural rules of deliberation act as test cases for critically examining the rules of membership, agenda setting and structuring of deliberation in different public institutions and thus provide a normative foundation for justified critique of these institutions. In a similar way as the respect conception of toleration, the discourse model derives its justification from the idea of reciprocal and general justification itself. That is, the rules of deliberation arise from participants' counterfactual expectations, which they cannot consistently reject in so far as they wish to take part in the practice of justifying shared norms of action in the first place (Habermas, 1990).[5] In the next section, my intention is to demonstrate the educational and normative potential associated with this model of democratic legitimacy, particularly focusing on the relevance of the model concerning the issue of free speech on campus, and the educational and democratic functions of higher education.

Resolving free speech issues on campus through rational deliberation

The literature on education for deliberative democracy and citizenship is rather extensive, with some works drawing from Habermas' and Benhabib's theories (e.g. Englund, 2010, 2011; Fleming, 2010; Martin, 2012). However, very few of these works address issues related to freedom of speech or directly discuss the relevance of the discourse model for determining the limits of free speech.[6] Accordingly, the suggestions introduced in this section can be considered as a novel contribution to the discussion on the relevance of the discourse model to education. Nevertheless, my suggestions are indebted to the idea expressed in many of the previous works on deliberative citizenship education, according to which a well-functioning democracy depends on the existence of an educated citizenry and especially citizens' communicative competences and reasonableness (e.g. Callan, 1997; Gutmann, 1999). Moreover, I also share the view expressed in some of the previous works that students learn to deliberate best by taking part in deliberation (Englund, 2010; Fleming, 2010; Gutmann, 1999). Accordingly, in addition to outlining a model of rational deliberation, which enables determining the limits of free speech on campus in an impartial manner, my purpose is to indicate how students can be educated concerning the nature of legitimate democratic deliberation in a way that might serve the democratic society.

As applied to the context of free speech controversies on campus, the normative content of the discourse model can be summarised through the following two points: first, the process of determining the limits of free speech should involve all those affected by these limits and, second, the regulations set by the university staff and administration should concern the procedural rules of deliberation rather than particular topics, views or the identities of participants. Let us start with the first point: as Habermas (1996) and Benhabib (1992) suggest, determining the limits of toleration requires involving those affected by these limits in the process of deliberation. Accordingly, implementing the discourse model on university campuses should ideally involve organising deliberations – for instance, public discussions, debates and panel discussions, the preferable form of conversation depending on the situation – among students and academics who are affected by these limits. Evidently, campuses are large units, and therefore it may not be possible to physically include all students in the process. However, while the actual deliberation might take place among student representatives and staff members, the events should be made open to larger audiences.

From the perspective of the discourse model, the evident benefit of involving students in the decision-making process is associated with the legitimacy of decisions. As noted above, the discourse theoretical notion of legitimacy rests upon the idea that those being affected by the

norms should also be the *authors* of these norms, this ensuring that the norms are voluntarily agreed upon (Habermas, 1996). Moreover, allowing student participation might help prevent future controversies and conflicts because being given the possibility to take part in the decision-making process, students might have less reason to protest when other students and academics use their right to free expression within the commonly agreed upon limits. Moreover, top-down regulations and bans may leave students feeling that their rights to free expression have been illegitimately delimited without sufficient justification and without hearing what the students themselves have to say on the issue. It is also noteworthy that the university administration does not always make wise or impartial decisions as even the most well-intending academics are influenced by many interests and may fail to make decisions with the equal interest of all students in view. This is why it is crucially important to leave the discursive space open to contestation and ensure that no single party or person has concentrated power on decisions concerning free speech regulations.

However, involving students in the decision-making processes does not mean that the deliberations should be unconstrained of without supervision and curation by the university administration. From the perspective of the discourse model, the crucial insight is that instead of top-down regulations and bans, the role of the university administration and staff should be to ensure that certain conversational constraints or discursive rules are sufficiently realised in the process of deliberation. Inclusivity being among the most important preconditions of rational deliberation, the university should warrant that invitations to take part in deliberation are extended to all students or student representatives affected by the suggested regulations and that all relevant parties are guaranteed equal opportunities to express their viewpoints in the course of deliberation. It is particularly important that marginalised and vulnerable groups are warranted equal access to deliberation and that their voices are not silenced or their viewpoints overlooked, bearing in mind that exclusion can also be internal to the process of deliberation. For instance, hate speech and ridicule can cause students or groups of students to withdraw from discussion (e.g. Ben-Porath, 2017).

This takes us to the second point: in addition to guaranteeing that the process of deliberation meets the aforementioned formal requirements, such as inclusivity and equal opportunities to various speech acts, there should also be regulations ensuring that the arguments and speech acts presented in deliberation meet the normative preconditions of legitimate deliberation. While actual political deliberations cannot be dictated or the quality of the arguments and reasoning employed in them cannot be externally influenced – which makes political processes not only profoundly undetermined but also subject to misuse – universities are *educational* institutions and have the responsibility to educate students concerning the discursive norms and rules that should apply to legitimate democratic deliberation. As Gutmann (1997) points out, students should know and be shown that they are expected to use their free speech responsibly at the same time as they know that they are being educated to become democratic citizens with the fullest range of rights and responsibilities, including the rights and responsibilities of free speech. As she further suggests, the difference between politics and education is that in educational contexts educators structure the environment of students so that they can teach and be taught by others, whereas citizens participate as equals in structuring the very environment in which they enjoy freedom of speech and other basic rights.

Accordingly, my suggestion is that the discourse theory of democracy can function as a model for creating an educational environment where students can be taught about the discursive norms that *should* apply to legitimate democratic discussion. This educational dimension is often missing from the accounts that address free speech regulations solely from the perspective of legislation and rights and their appropriate implementation on campus. In the context of higher education, the rules of democratic deliberation such as the ones introduced by the discourse model – including universal moral respect and egalitarian reciprocity (Benhabib, 1992) – should be explicitly addressed and their relevance to securing impartial and legitimate outcomes

should be demonstrated to students. These rules should at least indicate, first, that no one affected by the outcomes of deliberation should be excluded from the process, either by concretely preventing their participation or silencing them through speech; and, second, that neither the form nor the content of students' arguments should violate the presupposition of equality of all participants. Finally, students should also be asked to consider their arguments and claims from the impartial perspective of all students, not just their own immediate interests. It is important that students understand the role that these rules play in securing the impartiality and legitimacy of the process of deliberation; otherwise these rules will appear to students as nothing more than another set of externally imposed restrictions.

Importantly, by focusing on the rules of legitimate deliberation as the limits of toleration, the discourse model abolishes the need to restrict the topics of discussion and thus it might help eradicate 'gag rules' and trigger warnings, which are often found problematic from the perspective of academic freedom. Moreover, as Ben-Porath (2017) points out, discussion on controversial topics in a planned and mindful manner supports the development of informed, critical, and engaged citizens, and thus forms an integral part of the ethics of pedagogy in a higher education context. Nuraan Davids (2018) makes a similar point as she argues that top-down bans and prohibitions by the university administration often end up missing the educative potential involved in controversial expressions, because such regulations prevent the engagement of students. In addition, Benhabib argues that restricting topics of discussion in public dialogue is ultimately a greater threat to democracy than permitting the existence of "divergent, incompatible and even hostile conceptions of the good" (Benhabib, 1992, p. 116). This might be particularly true regarding the university, because it is an arena in which fluid and experimental ideas and social markers are introduced and in which many social justice movements have seen daylight. Accordingly, ruling out certain topics of discussion prior to deliberation might prevent important social issues from being raised and discussed publicly. In this sense, trigger warnings and gag rules might even serve as means of marginalisation and structural injustice.

However, as important as it is to allow deliberation on various controversial topics, including race, sexuality, economy and war, is to prevent the misuse of processes of deliberation for partisan or even discriminative purposes. Hence, whereas in political discourses deliberation itself must be trusted to filter out illegitimate outcomes, in the context of higher education, representatives of the staff and university administration should act as moderators who, while giving as much authority to the students as possible, intervene with the process whenever the rules of deliberation are questioned or violated. However, as Eamonn Callan (2011) points out, intervention does not have to mean silencing. Rather, from a discourse theoretical perspective, a proper way to intervene with claims that challenge the rules of deliberation is to ask for justification for these claims and check whether the given justifications meet the preconditions of rational deliberation and, ultimately, succeed in convincing other participants of their plausibility. For instance, a student expressing racist opinions can be asked to justify his or her opinions from the viewpoint of universal moral respect and egalitarian reciprocity, with the probable result that his or her views are found intolerable by others. As Habermas (2004) points out, in the case of racism, the adequate response is not toleration but the struggle against discrimination, and thus the racist "should quite simply overcome his racism" (p. 10).

Evidently, there are situations in which intervention and moderation of discussion by the university administration or staff might be difficult or even impossible to realise. These situations include the cases of invited speakers who, while not necessarily being known as controversial speakers, are not obligated to follow the rules of deliberation in their presentations and speeches. In these cases, visiting speakers might be informed in advance about the university policy concerning responsible use of free speech. It should also be ensured by the university administration that any controversial views presented by invited speakers can be questioned and discussed openly in accordance with the rules of deliberation described above. Another difficult case involves the events organised and sponsored by students themselves: while the university

should encourage students to practice their freedom of speech through various student-organised events, it should also ensure that these events do not undermine the university's commitment to responsible use of free speech. One possibility to address this issue is to form a committee of students, representing the student body as broadly as possible, which keeps track of and regularly takes part in student-organised events and spreads information to the organising students about responsible use of free speech in accordance with the university policy.

Moreover, the idea that students should be involved in the process of determining the limits of free speech on campus is not entirely without problems: the university is not only legally obligated by free speech legislation but also responsible for protecting the rights and dignity of students. Accordingly, student deliberations might not be the appropriate way of resolving free speech controversies in all situations and contexts. Especially in severe cases with actual threat to students' safety, well-being and integrity involved, deliberations among students might be considered as informative rather than decisive, and the university administration or a committee consisting of staff members might have the final call on regulations and possible sanctions. This also applies to situations where consensus cannot be reached among the disputing parties despite prolonged deliberations. However, even if the university administration has the final authority, from the perspective of discursive legitimacy, the decisions should be informed as much as possible by the arguments and viewpoints presented by students. As Gutmann (1997) points out, students grow into taking responsibility for their speech acts, and this growing is possible only if they are also granted sufficient freedom of expression; freedom, which is precisely prohibited by top-down regulations.

Conclusions

Drawing the limits of toleration concerning freedom of speech in liberal democratic societies is a complex and controversial issue. In this article, I have introduced the discourse theory of democracy as a model for drawing the limits of free expression in an impartial way in the context of the university campus, which is a public, pluralistic space. My suggestion was that students themselves should be allowed to take part in determining the limits of free speech on campus, this claim deriving from the discourse theoretical view of legitimacy and also from the insight, common to many representatives of deliberative citizenship education, according to which students learn to deliberate best by participating in deliberation (Englund, 2010; Fleming, 2010; Gutmann, 1999).

My other central argument was that the regulations set by the university administration and teachers should focus on rules or discursive norms of deliberation rather than controversial topics, not only because there is significant educational potential associated with discussions on controversial issues, but also because students should learn about the nature and norms of legitimate democratic discussion. This seems particularly important in the present 'post-truth era' and the prevailing culture of democratic discussion. As Seyla Benhabib (1996) points out, the discourse model of democracy reflects the underlying rationale of actual democratic practices, and although the normative presuppositions of rational deliberation may not be often realised in today's democratic politics, most citizens still intuitively condemn and recognise as illegitimate such forms of communication as propaganda, lying, personal insults, hate speech, and other forms of untruthful and intolerable speech. As long as the illegitimacy of these forms of communication is recognised and there is a desire to improve the culture of democratic discussion in society, legitimate forms of democratic discussion should be fostered by educational institutions, including higher education.

Finally, I would like to draw attention to the idea, central to the deliberative model, that the limits of free speech on campus should be viewed as always being open to renegotiation and challengeable by new insights or new parties taking part in deliberation. Free speech regulations

should thus be seen as a transformable "project" (Habermas, 1998, p. 70). This insight is particularly important for preserving the democratic and transformational potential of the university, associated with the possibility of introducing and addressing novel and controversial social and political issues and forming new social movements.

Notes

1. Toleration is a controversial concept in contemporary philosophy. In theories of democracy, toleration has typically been viewed as a virtue and an expression of mutual respect. However, in poststructuralist critique, the concept has been interpreted as being intertwined with power relations and associated with potentially repressive attitudes and practices. Due to limited space, I cannot address this discussion here. On the definition and justification of tolerance, see Forst (2013); on poststructuralist critique of tolerance, see Brown (2006); and on education for tolerance as a democratic virtue, see Drerup (2019).
2. The rights included in the system of rights fall into five broad categories. The first three are the basic negative liberties, membership rights, and due-process rights that together guarantee individual freedom and private autonomy. The fourth, rights of political participation, guarantees public autonomy. For a more extensive description of the system of rights and their relevance in Habermas' theory of democracy, see Habermas (1996, pp. 122–123).
3. Forst (2013) explicitly states the indebtedness of his theory of toleration to Habermas' discourse ethics in his central work on toleration. Similarly, Habermas (2004) connects his discourse theory of democracy with Forst's theory of toleration in his essay "Religious tolerance: The pacemaker for cultural rights". For further discussions on the discourse theory of democracy and the notion of toleration, see Johnson (2000) and Thomassen (2006).
4. Habermas makes the point of the underdetermined or "unsaturated" (Habermas, 1996, p. 125) nature of the rules of deliberation particularly in his *Between Facts and Norms* (1996) and the essay collection *The Inclusion of the Other* (1998) where he argues that, in the medium of law and politics, basic constitutional rights function as the procedural preconditions of democratic deliberation. Accordingly, Habermas argues that the constitution should be viewed as a "project" (Habermas, 1998, p. 70) and open to reinterpretation in different historical contexts and by the comprehensive ethical doctrines prevailing in society.
5. Habermas' argument is that in so far as participants engage in the practice of argumentation, they must, as a condition of the intelligibility of the practice, assume that the preconditions of rational argumentation are satisfied to a sufficient degree. In this sense, these presuppositions create "a weak transcendental necessity" (Habermas, 1996, p. 4) and can only be disregarded at the cost of performative contradiction. Evidently, if the participants in deliberation do not even want to resolve normative conflicts in a legitimate manner, do not believe that it is possible to resolve such conflicts in a rational way, or simply aim to get their own ideas through or win the argument, then they are not engaged in a practice of justification and have no reason to adhere to the rules of argumentation. Responding to this type of argument, however, falls beyond the scope of this article. For Habermas' response to this type of sceptical argument, see Habermas (1990, pp. 43–115).
6. Amy Gutmann (1997) addresses the topic of free speech in education in one of her articles, but her article represents a general defence of free speech in the context of primary education rather than an attempt to apply a particular model of deliberation to resolving free speech issues, the latter being the focus of this article.

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